

## EDUCATIONAL EXAMINERS BOARD[282]

### Notice of Intended Action

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 1, “General,” Chapter 3, “Declaratory Orders,” Chapter 5, “Public Records and Fair Information Practices,” Chapter 10, “Child Support Noncompliance,” Chapter 11, “Complaints, Investigations, Contested Case Hearings,” Chapter 13, “Issuance of Teacher Licenses and Endorsements,” Chapter 15, “Special Education Support Personnel Authorizations,” Chapter 17, “Career and Technical Endorsements and Licenses,” Chapter 20, “Renewals,” and Chapter 25, “Code of Professional Conduct and Ethics,” Iowa Administrative Code.

These amendments clean up language, Iowa Code citations and administrative rule citations in the administrative rules of the Board of Educational Examiners. During the 2002 legislative session, changes were made to the numbering and language of the Iowa Rules of Civil Procedure (Iowa R.C.P.). The references to the Iowa R.C.P. in the Board’s current rules do not reflect the changes and must be amended to reference the correct Iowa R.C.P. section. In 2002, Iowa Code section 272.6 was repealed; the Board’s rules still reference this section. The information on fraudulent applications is referenced in Iowa Code 272.2, subsection 14, paragraph “b,” subparagraph (3), and the Board’s rules therefore should be amended to reference this Iowa Code section. During the 2009 legislative session, 2009 Iowa Acts, Senate File 340, repealed Iowa Code section 692A.13 and created Iowa Code section 692A.121. The Board’s rules reference a repealed Iowa Code section and therefore must be amended to reference the new Iowa Code section. In 2008, the Board renumbered several chapters of its rules and changed the references to these renumbered chapters in its rules as necessary; several old references remain in the rules that need to reference the 2008 changes. The Board has made necessary changes to references to the Iowa Code as the Iowa legislature has amended Iowa Code sections affecting the Board. The changes to the Board’s rules have referenced the location of the amended Iowa Code in the Iowa Acts or the Supplement to the Iowa Code. These amendments are now codified in the Iowa Code, and the Board’s rules should cite the correct Iowa Code reference. Additional cleanup of the Board’s rules corrects citations to the Iowa Code and revises unclear and confusing language.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, January 4, 2012, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendments before 4 p.m. on Friday, January 6, 2012. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to [kim.cunningham@iowa.gov](mailto:kim.cunningham@iowa.gov), or by fax to (515)281-7669.

After analysis and review of this rule making, no adverse impact on jobs has been found. These amendments clean up outdated language.

These amendments are intended to implement Iowa Code chapter 272.

The following amendments are proposed.

ITEM 1. Amend subrule 1.2(2) as follows:

**1.2(2) Composition.** The composition of the board is defined in Iowa Code section 272.3 as amended by 2007 Iowa Acts, House File 615, section 1.

ITEM 2. Amend **282—Chapter 3**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 17A.9 as amended by 1998 Iowa Acts, chapter 1202.

ITEM 3. Amend paragraph **5.13(2)“g”** as follows:

g. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(e) R. Civ. P. 1.503, Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

ITEM 4. Amend **282—Chapter 10** as follows:

#### CHAPTER 10 CHILD SUPPORT NONCOMPLIANCE

**282—10.1(272,252J) Issuance or renewal of a license—denial.** The board shall deny the issuance or renewal of a license upon the receipt of a certificate of noncompliance from the child support recovery unit of the department of human services according to the procedures in Iowa Code Supplement chapter 252J. In addition to the procedures set forth in Iowa Code Supplement chapter 252J, the following shall apply.

**10.1(1)** The notice required by Iowa Code Supplement section 252J.8 shall be served upon the applicant or licensee by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rules Rule of Civil Procedure 56.4 1.305. Alternatively, the applicant or licensee may accept service personally or through authorized counsel.

**10.1(2)** The effective date of the denial of the issuance or renewal of a license, as specified in the notice required by Iowa Code Supplement section 252J.8, shall be 60 days following service of the notice upon the applicant or licensee.

**10.1(3)** The board's administrator is authorized to prepare and serve the notice required by Iowa Code Supplement section 252J.8 upon the applicant or licensee.

**10.1(4)** Applicants and licensees shall keep the board informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code Supplement chapter 252J and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code Supplement section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

**10.1(5)** All board fees required for application, license renewal, or license reinstatement must be paid by applicants or licensees before a license will be issued, renewed, or reinstated after the board has denied the issuance or renewal of a license pursuant to Iowa Code Supplement chapter 252J.

**10.1(6)** In the event an applicant or licensee files a timely district court action following service of a board notice pursuant to Iowa Code Supplement sections 252J.8 and 252J.9, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

**10.1(7)** No change.

**282—10.2(252J) Suspension or revocation of a license.** The board shall suspend or revoke a license upon the receipt of a certificate of noncompliance from the child support recovery unit of the department of human services according to the procedures set forth in Iowa Code Supplement chapter 252J. In addition to the procedures set forth in Iowa Code Supplement chapter 252J, the following shall apply.

**10.2(1)** The notice required by Iowa Code Supplement section 252J.8 shall be served upon the licensee by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rules Rule of Civil Procedure ~~56.4~~ 1.305. Alternatively, the licensee may accept service personally or through authorized counsel.

**10.2(2)** The effective date of the suspension or revocation of a license, as specified in the notice required by Iowa Code Supplement section 252J.8, shall be 60 days following service of the notice upon the licensee.

**10.2(3)** The board's administrator is authorized to prepare and serve the notice required by Iowa Code Supplement section 252J.8 and is directed to notify the licensee that the license will be suspended unless the license is already suspended on other grounds. In the event that the license is on suspension, the administrator shall notify the licensee of the board's intention to continue the suspension.

**10.2(4)** The licensee shall keep the board informed of all court actions, and all child support recovery unit action taken under or in connection with Iowa Code Supplement chapter 252J and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code Supplement section 252J.9, all court orders entered in such actions and withdrawals of certificates of noncompliance by the child support recovery unit.

**10.2(5)** All board fees required for license renewal or license reinstatement must be paid by licensees before a license will be reinstated after the board has suspended or revoked a license pursuant to Iowa Code Supplement chapter 252J.

**10.2(6)** In the event a licensee files a district court action following service of a board notice pursuant to Iowa Code Supplement sections 252J.8 and 252J.9, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the suspension or revocation, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

**10.2(7)** No change.

**282—10.3(17A,22,252J) Sharing of information.** Notwithstanding any statutory confidentiality provision, the board may share information with the child support recovery unit of the department of human services through manual or automated means for the sole purpose of identifying applicants or licensees subject to enforcement under Iowa Code Supplement chapter 252J or 598.

These rules are intended to implement Iowa Code Supplement chapter 252J.

ITEM 5. Amend rule **282—11.2(17A)**, definition of "Contested case," as follows:

"*Contested case*" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under ~~1998 Iowa Acts, chapter 1202, section 14~~ Iowa Code section 17A.10A.

ITEM 6. Amend numbered paragraph **11.4(1)"d"(1)"3"** as follows:

3. Has not met a reporting requirement stipulated by Iowa Code section 272.15 ~~as amended by 2007 Iowa Acts, Senate File 588, section 33, Iowa Code section 279.43, 281—subrule 102.11(2), 282—Chapter 11, or 282—Chapter 25; or~~

ITEM 7. Amend subrule 11.11(2) as follows:

**11.11(2)** The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual

information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19, and subrules 11.11(3) and 11.24(9).

ITEM 8. Amend subrule 11.11(4), introductory paragraph, as follows:

**11.11(4)** If a party asserts disqualification on any appropriate ground, including those listed in subrule 11.11(1), the party shall file a motion supported by an affidavit pursuant to ~~1998 Iowa Acts, chapter 1202, section 19(7)~~ Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

ITEM 9. Amend subrule 11.23(6) as follows:

**11.23(6)** “Good cause” for purposes of this rule shall have the same meaning as “good cause” for setting aside a default judgment under Iowa Rule of Civil Procedure ~~236~~ 1.977.

ITEM 10. Amend subrule 11.30(2) as follows:

**11.30(2)** *When granted.* In determining whether to grant a stay, the executive director or presiding officer shall consider the factors listed in ~~1998 Iowa Acts, chapter 1202, section 23(5e)~~ Iowa Code section 17A.19(5).

ITEM 11. Amend subrule 11.35(3) as follows:

**11.35(3)** *Fraudulent applications.* An application shall be considered fraudulent pursuant to Iowa Code section ~~272.6(4)~~ 272.2(14) “b”(3) if it contains any false representation of a material fact or any omission of a material fact which should have been disclosed at the time of application for licensure or is submitted with a false or forged diploma, certificate, affidavit, identification, or other document material to the applicant’s qualification for licensure or material to any of the grounds for denial set forth in Iowa Code sections ~~section 272.2(14) and 272.6.~~

ITEM 12. Amend subrule 11.38(1) as follows:

**11.38(1)** *Method of reporting.* A report of misconduct made by the director, pursuant to Iowa Code Supplement section ~~256.9(56)~~ 256.9(52), or made by an employee of the department of education, pursuant to Iowa Code Supplement section 272.15(2), shall comply with the requirements of subrule 11.37(1).

ITEM 13. Amend subrule 13.21(3) as follows:

**13.21(3)** Credit for the human relations requirement shall be given for licensed persons who can give evidence that they have completed a human relations program which meets board of educational examiners criteria (see rule ~~282—13.24(272)~~ 13.22(272)).

ITEM 14. Amend paragraph **15.7(6)“a”** as follows:

a. *Authorization.* The holder of this license is authorized to teach pupils with a visual impairment (see Iowa Code section ~~256B.8~~ 256B.2), including those pupils who are deaf-blind.

ITEM 15. Amend paragraph **17.2(2)“f”** as follows:

f. An approved human relations course as described in rule ~~282—13.26(272)~~ 13.22(272).

ITEM 16. Amend subrule 20.3(3) as follows:

**20.3(3)** *Background check.* Every renewal applicant is required to submit a completed application form with the applicant’s signature to facilitate a check of the sex offender registry information under Iowa Code section ~~692A.13~~ 692A.121, the central registry for child abuse information established under Iowa Code chapter 235A, and the dependent adult abuse records maintained under Iowa Code chapter 235B. The board may assess the applicant a fee no greater than the costs associated with obtaining and evaluating the background check.

ITEM 17. Amend paragraph **25.3(3)“d”** as follows:

d. Falsifying any records or information submitted to the board in compliance with the license renewal requirements imposed under ~~282—Chapter 17~~ 20.